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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/697,124  | 10/31/2003  | Yoshiyuki Fukumoto   | Q78162              | 8462             |
| 23373   | 7590        | 04/05/2006           | EXAMINER            |                  |
| SUGHRUE MION, PLLC<br>2100 PENNSYLVANIA AVENUE, N.W.<br>SUITE 800<br>WASHINGTON, DC 20037 |             |                      | EVANS, JEFFERSON A  |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2627                |                  |

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/697,124             | FUKUMOTO ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Jefferson A. Evans     | 2627                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 27 January 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 2-4,6,7,9,10,13 and 15-50 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,5,8,11,12 and 14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

Claims 1 to 50 are pending.

***Election/Restrictions***

1. Applicant's election without traverse of the Invention of Group II, claims 1 to 45, and further Species Two, figure 2, in the reply filed on 1-27-2006 is acknowledged. Applicant indicates claims 8, 11, 14, and 15 correspond to the elected Species, with claim 1 being generic. The Examiner agrees, except for claim 15, and notes that intermediate claims 5 and 12 will also be examined. Claim 15 includes two diffusion barrier layers whereas the embodiment of figure 2 does not appear to include two diffusion barrier layers. Claims 2-4, 6, 7, 9 10, 13, and 15-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention and/or Species, there being no allowable generic or linking claim. Election was made **without traverse.**

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Specification***

3. The abstract of the disclosure is objected to because of the presence of the legal phraseology "said".

4. The title of the invention is not adequately descriptive. A new title is required that is more clearly indicative of the invention to which the claims are directed by making reference to the diffusion barrier structure between the MR element and the conductor.

***Claim Rejections - 35 USC § 112***

5. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "said oxide layer" is indefinite as the diffusion barrier layer has not been limited to being an oxide layer, but could be a SiN layer for example.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 5, 8, 11, 12, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Slaughter et al (U.S. 6,544,801). Slaughter discloses a magnetoresistive tunnel junction device including a diffusion barrier structure 67 of AlO<sub>x</sub> or TaN<sub>x</sub> having a thickness as low as 10 Angstroms (1.0 nanometer) and positioned between a conductor 68 and a free layer 66. The limitation of claim 11 concerning free energies will be

inherently met by the Slaughter reference. Barrier layer 64 may be as thin as 7 Angstroms (0.7 nanometers).

8. Note that the Examiner's Art Unit designation has changed from 2652 to 2627.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jefferson A. Evans whose telephone number is 571-272-7574. The examiner can normally be reached on Monday to Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa Thi Nguyen can be reached on 571-272-7579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JAE  
April 3, 2006

Jefferson A. Evans  
Primary Examiner  
Art Unit 2627

JEFFERSON EVANS  
PRIMARY EXAMINER